

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 6768 OF 2000

Dilip Ambiwade ... Petitioner

vs.

Yashwantrao Open University & Anr. Chavan ... Mah. Respondents

Shri Dilip Ambiwade in person
Shri R.P. Rele with Tayade for Respondents.

CORAM : A.P.SHAH, &
S.U.KAMDAR, JJ.

DATE : 24th September, 2004.

ORAL JUDGMENT : (Per S.U. Kamdar, J.)

1. The petitioner who has appeared in person in the present petition has strenuously but with dignity placed his arguments before us to regain his lost job of the post of Assistant Registrar in the respondent no. 1 University. We have all sympathies for him. However, the dictate of law and the emerging facts from the record per force compels us to take a contrary decision. A summary of the facts to the extent necessary for

determination of the issues raised in the present
petition have been briefly recorded hereunder:-

2. On 28.1.1992 the petitioner was appointed as Assistant Registrar in the respondent University. It seems that from the beginning his relationship with the management has not been cordial. On 13.12.1994, the petitioner was suspended from services. On 3.1.1995, a charge sheet was issued to the petitioner. In January 1995 itself the petitioner filed a writ petition in this Court being Writ Petition No. 47 of 1995 challenging the suspension order on the ground of alleged malafide. By a consent order dated 1.2.1995 by and between the management and the petitioner it was agreed that though the suspension will not be revoked, the enquiry against the petitioner will be completed expeditiously and in any event within a period of four months from the date of the said order. On 7.1.1995, the services of the petitioner came to be terminated pursuant to the said enquiry proceedings. This termination order was challenged in this Court by filing a writ petition being Writ Petition No. 3279 of 1995. By an interim order

dated 7.9.1995, this Court was pleased to stay the order of termination and directed that the petitioner should be continued in service pending the disposal of the said petition.

3. Consequently, the petitioner was taken back in job but was transferred to the Registration Section and it is the case of the petitioner that he exposed a malpractice racket which was rampant at that point of time in Registration Section of the University. It is his further case that he also addressed various letters to the Vice Chancellor exposing the aforesaid malpractices and seeking action against the employees of the said Registration Section. Sometime in or about November, 1997, it came to the notice of the university that there have been malpractices in admission to the college and accordingly a fact finding committee was appointed to look into illegal admissions which had never been sanctioned by the Admission Committee. On 11.12.1997, a police complaint was filed against the petitioner as one of the accused involved in a racket of granting admission by accepting money. On the same

day, the petitioner was arrested and search was carried out at his house. On 17.12.1997, the petitioner was released on bail. In the meantime on 15.12.1997, the petitioner was suspended from service once again. On 21.1.1998, a charge sheet was issued to the petitioner inter alia seeking his explanation as to why his services should not be terminated on the basis of various charges including the charge of malpractices in granting admission to the students in 1st Respondent University. On 2.5.1998, the petitioner filed his reply. It seems that in the enquiry proceedings, the petitioner did not remain present and an exparte enquiry was conducted against the petitioner. In July 1998, the petitioner filed a writ petition being Writ Petition No. 4217 of 1998 in this Court challenging his suspension order and also commencement of a departmental enquiry against him. On 9.10.1998, this Court set aside the departmental enquiry as well as the suspension order against the petitioner and reinstated the petitioner in service. However, the management preferred a Special Leave Petition in the Honourable Supreme Court of India being SLP (Civil)

No. 17195 of 1998 and by an order and judgment dated 15.3.1998, the Apex Court allowed the said Special Leave Petition and set aside the High Court order and directed that the enquiry must proceed. On 23.6.2000, the said writ petition No. 4217 of 1998 which was pending in this Court, came up for hearing when this Court refused to interfere with the pending enquiry proceedings and/or suspension order. The said petition was dismissed with the direction that the contentions raised by the petitioner in the said writ petition are kept open to be agitated at the time of challenge to the final order if passed against the petitioner in the course of enquiry proceedings. The matter was proceeded further and ultimately the enquiry officer has given his report and the same was served upon the petitioner on 23.6.2000 seeking his explanation as to why his services should not be terminated. On 25.8.2000, the petitioner filed his reply to the said show cause notice and ultimately on 12.10.2000 the services of the petitioner were terminated. Being aggrieved by the said order of termination, the petitioner has preferred the present writ petition in this Court and has inter

alia sought a writ of certiorari from this Court for quashing and setting aside the charge sheet dated 31.1.1998 and consequent termination order dated 12.10.2000. The petitioner as a consequential relief has also claimed that the petitioner should be reinstated in the post of the Assistant Registrar in the first respondent University with full back wages and all other consequential benefits. The petitioner is also seeking a promotion to the higher grade which he has lost in the course of the enquiry proceedings.

4. With this background of facts, we are called upon to determine whether the enquiry proceedings initiated and continued by the authorities i.e. the 1st respondent University is so illegal and bad that it calls for an interference by this Court in its writ jurisdiction under Article 226 of the Constitution of India.

5. The petitioner who has appeared in person and has declined any legal assistance even appointment of an advocate as an amicus curie has urged before us five basic contentions and is seeking that this

Court should invoke a writ jurisdiction under Article 226 of the Constitution of India and set right the injustice which has been inflicted upon him by the respondent University. In support of his aforesaid prayers, he has made following five submissions which are briefly stated as under :-

(i) Firstly it is contended that the entire enquiry proceedings is void ab initio as under the provisions of the rules read with S.S. Code the Registrar has no power or jurisdiction to initiate and/or direct initiation of the enquiry proceedings against the respondent no. 1 who was holding the post of an Assistant Registrar. This argument has been advanced by the petitioner on the basis that the Registrar not being an appointing authority, cannot act as a disciplinary authority to take disciplinary action against the petitioner herein.

(ii) Secondly, it is contended that the charge sheet issued by the respondent to the

petitioner is illegal, unlawful and invalid because the charge sheet has been issued by an enquiry officer under his own signature and not by the disciplinary authority which is necessary for the purpose of conducting a valid departmental enquiry against the petitioner.

iii) Thirdly, the contention raised by the petitioner is that the enquiry officer who was an advocate and appointed by the respondent University was totally biased against the petitioner and the conduct of the enquiry proceedings per se indicates such a bias of the enquiry officer. It is, therefore, contended that the finding of the enquiry officer suffers from prejudicial bias against the petitioner and thus, cannot be accepted for the purpose of inflicting punishment of termination against the petitioner herein.

iv) Fourthly, it has been alleged by the petitioner that there is a breach of the

principles of natural justice in as much as the petitioner was not permitted to carry out cross-examination of various witnesses nor was the petitioner permitted to produce his own witnesses in support of his case to establish his innocence and, therefore, the enquiry officer has committed breach of the principles of natural justice in the course of the enquiry. Therefore it is urged that the said findings and the consequential order of the disciplinary authority of termination are both illegal and liable to be quashed and set aside.

(v) Fifthly, the petitioner has contended that the findings of the enquiry officer are perverse and based on no material on record. He refers to the evidence which is led by the parties and contends that on the basis of the aforesaid evidence it is not possible to arrive at a finding of guilt against the petitioner by any reasonable person and consequently the order of termination against him is bad in law.

6. On the basis of the aforesaid five contentions, the petitioner has urged and has requested us to invoke our jurisdiction under Article 226 of the Constitution of India and set aside the punishment order of termination as against him.

7. On the other hand, Mr. Rele, learned Senior Advocate appearing on behalf of respondent no. 1 University has urged that the petitioner has no case in law and we should not pass orders on the basis of misplaced sympathies. He has urged that there is an overwhelming evidence against the petitioner of corruption and bribery in granting admissions to the students to the B.Ed., course of the college and, therefore, it is in the public interest that serious action is initiated against the petitioner herein. The learned counsel for the respondent has further urged that in so far as the legal contentions raised by the petitioner about the validity of the enquiry is concerned, on plain reading of various provisions has no merit and,

therefore, the present petition is devoid of any merit and should be dismissed. It has been further urged by the learned counsel for the respondent that in any event the respondent no. 1 has lost confidence in the petitioner who was holding a senior post of Assistant Registrar and, therefore, the petitioner's services cannot be foisted upon respondent no. 1 University. He therefore, contended that the present petition should be dismissed and this Court should not interfere with the pure finding of facts of the departmental enquiry in writ jurisdiction under Article 226 of the Constitution of India.

8. Before we deal with the rival submissions and contentions it would not be out of place to indicate that we did make an effort to see whether there can be any amicable settlement of the dispute by and between the parties. We also explored the possibility whether the petitioner would leave the job on receipt of some ex-gratia payment from the respondent no. 1 University. However, we must confess that we have been unsuccessful in arriving at such an amicable settlement. In view thereof,

in discharge of our duty we shall now deal with the arguments advanced before us by both the parties.

9. The jurisdiction of this Court under Article 226 of the Constitution of India in a departmental proceeding has now been well defined by a series of judgments of the Supreme Court. Thus before dealing with this matter, we thought it fit and proper to remind ourselves of the said jurisdictional parameters laid down by the Supreme Court for exercise of our jurisdiction under Article 226 of the Constitution of India. Without going into the large number of judgments, we thought it fit and proper only to set out few of the Supreme Court judgments which conclusively decide the issue about the scope and ambit of jurisdiction under Article 226 of the Constitution of India in so far as interference with departmental enquiries is concerned. In the case of *U.P.S.R.T.C. & Others v. Har Narain Singh & Others* reported in 1999 AIR SCW 4782, the Supreme Court has held as under :-

"A single Judge of the High Court re-appreciated the evidence led in the enquiry and quashed the order passed by the Tribunal as also the order passed by the Disciplinary Authority. The High Court clearly exceeded its jurisdiction in doing so because the High Court was not sitting in appeal over the findings given by the Disciplinary Authority. The re-examination of the evidence led in the Disciplinary Proceedings was not warranted. The impugned judgment and order of the High Court are, therefore, set aside and the order of the Tribunal is restored."

10. In the latest judgment of the Supreme Court in *Bank of India & Anr. v. Degale Suryanarayana*, reported in 1999 II CLR 465 while reiterating the principle laid down by a Constitution Bench in the case of *Union of India v. H.C. Goel* 1964 (4) SCR

718 has stated as under:-

"11. Strict rules of evidence are not

applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonable and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of malafides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived

at by the departmental authority, the same has to be sustained. In Union of India v.

H.C. Goel 1964 (4) SCR 718 the Constitution

Bench has held:-

"the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."

11. Now, turning to the contentions raised before us by the parties and examining the same in light of the aforesaid principles laid down by the Apex Court, we are of the view that the petitioner's contentions have no merit.

12. Firstly dealing with his first contention that the Registrar was not the disciplinary authority and was not entitled to initiate disciplinary

proceedings, we are of the view that the said contention has no merit. Firstly, the appointment letter issued to the petitioner dated 20.1.1992 has been signed and issued by the Registrar and thus he is the appointing authority and thus obviously he was the appropriate authority to initiate the disciplinary proceedings against the petitioner.

13. The provisions of Yashwantrao Chavan Maharashtra Open University Act, 1989 under which the Respondent No. 1 is incorporated provides for the Registrar under Section 12 thereof. Sub-section (3) of Section 12 provides that every Registrar shall exercise such power and perform such functions as may be prescribed by the statute. The provisions of section 21 provide that subject to the provisions of the Act the statute may provide for all or any of the matters set out therein. Under sub clause (d) of section 21 it is provided that the manner of appointment of teachers and other employees of the University, their emoluments, qualifications, Code of Conduct and other conditions of service including the manner of termination of service and other disciplinary

actions shall be provided by the statute. Section 22 provides for the 2nd schedule which lists various statutes. Rule 04. of the Second Schedule provides for Registrar and his powers, functions and duties. One of the power and function of the Registrar as provided therein is as under :-

"(03) A Registrar designated by the Board of Management shall have powers to take disciplinary action against such of the employees, excluding teachers and other members as the Board of Management may, by order, specify."

Thus, the provisions of the Act, Rules and the statute under the 2nd schedule leave no manner of doubt that so far as the petitioner is concerned, appointing as well as disciplinary authority is the Registrar. This conclusion is further supported by appointment letter issued to the petitioner himself while he was appointed as the Assistant Registrar which, as stated above, was signed by the

Registrar. However, the petitioner contends that under statute 7 of the 2nd schedule which provides for powers and functions of the Board of Management it is these provisions which are applicable in his case and clause (j) provides for regulating and enforcing discipline amongst the employees in accordance with the statute. It is his contention that by virtue of provisions of clause 7 of Schedule II to the said Act, it is the Board of Management, who can take disciplinary action against him. We have considered the said submissions. The provisions of the statute 7 sub clause (j) of Schedule 2 merely provides for exercise of power of disciplinary action in accordance with the statute. We are of the opinion that in view of the clear language of the provisions of the Act read with the statute 4 of 2nd schedule, it leaves no manner of doubt that in fact the Registrar is the appropriate authority to appoint the petitioner as well as take disciplinary action against him. In view of the aforesaid, we are not inclined to accept the contention of the petitioner that the Registrar is not the appropriate authority and, therefore, the enquiry

initiated by him is void ab initio. Reliance placed on sub clause (j) of rule 7 has no application whatsoever. In any event, when the statute expressly confers power upon the registrar to take disciplinary action, the same cannot be ignored by relying upon the sub clause (j) of statute 7 of second schedule which is general in nature. Thus, we reject the said contention of the petitioner.

14. The next contention raised by the petitioner pertain to the validity of the charge sheet on the ground that it has been signed by the enquiry officer and, therefore, the same is invalid in law. We have seen the charge sheet which is on record. Undoubtedly, the charge sheet has been signed by the enquiry officer. The learned counsel for the respondent however draws our attention to the fact that the statement of imputation which is forming annexure to the said charge sheet is however signed by the Registrar and not by the enquiry officer. He points out that the petitioner in his petition has not annexed the annexure to the said charge sheet which indicates that the statement of

imputation against the petitioner has been signed
 by the Registrar himself. The learned counsel has
 also drawn our attention to the provisions of the
 Maharashtra Non-Agriculture University (Terms and
 Conditions of Service of the non-teaching Em-
 ployees) Rules 1984. It has been stated by the
 respondent no. 1 in their affidavit that pending
 the sanction to the draft statute framed by
 respondent no. 1 University, which is yet not been
 assented to by the Vice Chancellor and, therefore,
 are not in force, the standard Code prescribed
 under the said Maharashtra Non-Agricultural
 Universities and its affiliated Colleges Standard
 Code (Terms and Conditions of Service of Non-
 teaching employees) Rules 1984 has been extended to
 the respondent no. 1 university. It has been
 pointed out that under rule 46 of the said Standard
 Code read with format 10, it is necessary that the
 charge sheet has to be signed by the disciplinary
 authority. The provisions of sub rule 3 of rule 46
 which prescribes the imposition of major penalty
 reads as under :-

"46.(3) The Disciplinary Authority shall deliver or cause to be delivered to the employee, in Form 10 of Appendix I appended to these rules a copy of the articles of charge, the statement of imputation of misconduct and misbehaviour and a list of documents and of the witnesses by which each article of charge is proposed to be sustained, and shall by a written notice require the employee to submit to it within such time as may be specified in the notice, a written statement of his defence, and to state whether he desires to be heard in person."

Format 10 prescribes the format of the charge sheet which once again provides issuance of the charge sheet by the enquiry officer under his own signature. The said format 10 is set out hereunder.

Form No. 10

(see rule 46)

Form of Charge Sheet

1. (Name and Designation)

appointed Inquiry Authority/Officer by the
order issued by

under his No. of

to hold a Departmental Inquiry into your
conduct do hereby charge you
(Shri)

as under :-

(1)

(2)

etc.

2. A statement of allegations on which the
charges are based is attached herewith. A
list of documents and of the witnesses by
which each article of charge is proposed to
be sustained is also enclosed.

3. You are called upon to put in your
written statement of defence along with such
documents as you intend to rely on in your
defence in answer to the above charges within
.... days from the date thereof and to state

at the same time whether you desire to be heard in person. If you desire to examine any witness in your defence, you are called upon to furnish at the same time the names and addresses of your witnesses. On your failure to put in your statement to furnish the names and addresses of your witnesses within the time allowed to you, it will be presumed that you do not wish to make a statement or to furnish the names and addresses of any witnesses.

4. You are further called upon to state why the above charges or any of them, if held proved, should not be considered as good and sufficient ground for imposing upon you anyone of the penalties specified in the rule 43 of the Standard Code (terms and Conditions of service of the non-teaching employees) 1984. Any representation that you may make with regard to the action taken against you would be considered by the competent authority before the final order of punishment is passed. You may, if you so

desire, apply for copies of the relevant documents."

15. We have considered the provisions of the Act, S S Code and Rules made thereunder. We have also perused the charge sheet. In our view, the charge sheet issued is legal and valid because it is in consonance with the actual requirement prescribed under Rule 46 of the Standard Code. The said Code is applicable to the respondent university as indicated hereinabove because of the provisions of the Maharashtra Non-Agricultural Universities and its affiliated Colleges Standard Code (Terms and Conditions of Service of Non-teaching employees) Rules 1984 are applicable to the respondent no. 1 university. The question whether a charge sheet is to be signed and issued by the enquiry officer or not has also come up for consideration before the learned Single Judge of this Court who has in his considered judgment in the case of Navinkumar Tiwari v. Principal, Thadomal Shahani Engineering College & Anr. reported in 2000 III CLR page 178 has held as under :-

"3. Two submissions were urged on behalf of the Petitioner:-

(i) In the present case the Enquiry Officer had signed the charge-sheet and it is submitted that this was done without any authority because under the provisions of the Standard Code, the charge-sheet could have been issued only by the Competent Authority as defined.

(ii) The Disciplinary Authority in the present case, it is submitted, was the Principal, the 1st Respondent to the petition. During the course of the enquiry, the 1st Respondent, it is an admitted position, appeared as a witness in the enquiry. The submission is that this would constitute a violation of the principles of natural justice since a witness to the enquiry would also be a Disciplinary Authority. Copy para. 3.

In so far as the first point is concerned, I am of the view that there is no substance therein. Form No. 10 of the Forms annexed to the Standard Code expressly contemplates that the actual charge-sheet will be issued by the Enquiry Officer who is appointed by the Management to conduct the enquiry. Form No. 10 is to be read with Rule 46. Under Rule 46 (1), the Competent Authority may enquiry into the misconduct itself or may appoint an Enquiry Officer to hold an enquiry. Sub-rule (2) provides that the Disciplinary Authority shall draw up or

cause to be drawn up the articles of charge. The Disciplinary Authority is required under Rule (3) to deliver or cause to be delivered to the employee in Form 10 of Appendix 1 appended to the Rules a copy of the articles of charge. In the premises, I do not find any substance in this submission. Rule 46(4)(a) provides that on receipt of the written statement of defence, the Disciplinary Authority may itself inquire into such of the articles of charges as are not admitted, or, if it considers it necessary to do so, appoint an Enquiry Authority. In my view, the Articles of charge which have been issued in pursuance of Form 10 cannot be found fault with."

We are in complete agreement with the view expressed by the learned Single Judge in the aforesaid judgment. In the light of the aforesaid position in law, we feel that there is no illegality or irregularity in issuing the charge sheet duly signed by the enquiry officer and the

statement of allegations or imputations duly signed by the disciplinary authority. Thus, the second contention raised by the petitioner also is devoid of any merit and therefore is required to be rejected.

16. The petitioner has thereafter contended that the enquiry officer was biased right from the beginning of the enquiry proceedings. We have considered though not in a minute detail the conduct of the enquiry officer. It has been a detailed inquiry in as much as the said enquiry proceedings was conducted in about 101 sittings and 182 documents were produced and there are about 60 witnesses examined in the departmental proceedings. On consideration of the conduct of the enquiry proceedings as it has transpired before the departmental authorities, we are of the opinion that there is nothing to indicate that in fact the enquiry officer was at all biased. On the other hand, we find from the enquiry proceedings that the allegations of bias have been made by the petitioner at a belated stage. The first letter pertaining to the alleged claim of bias was made by

addressing a letter dated 30.6.1999. This is the first letter which was addressed by the petitioner containing the allegations of bias, The Respondents in their affidavit in reply have produced the said letter dated 30.6.1999. It was further pointed out by the learned counsel appearing for the respondent university that this belated allegation of bias was made because in one of the meetings of the enquiry which took place on 28.6.1999 the petitioner appeared and he had altercations with the enquiry officer. According to the minutes of the meeting dated 28.6.1999 which are summarized by respondent no. 1 in the summary of the proceedings the delinquent employee i.e. the petitioner herein misbehaved with the enquiry officer and walked out from the enquiry without signing the proceedings and consequently enquiry proceedings was required to be adjourned to 2.7.1999 by giving him a last opportunity to avail the second opportunity of cross-examining. We find great force in the argument of the respondent that the allegations of bias are motivated and made at a belated stage because of the altercation the petitioner had with enquiry officer in the enquiry proceedings. By

28.6.1999 almost more than 86 sittings were already complete out of total 101 sittings and although the enquiry had started on 28.3.1998, for the first time the so called allegations of bias surfaced only on 30.6.1999 i.e. almost one year three months after the enquiry had already commenced. We therefore do not find any substance in the argument advanced by the petitioner in respect of the said allegation of bias as against the enquiry officer. We may also add herein that the enquiry officer was an independent person. He was a practicing advocate and had nothing to do with the respondent university. We therefore fail to see why an independent advocate ought to have any bias against the petitioner in the present case. In any view of the matter, the allegations of bias are also not substantiated by any material in support thereof and therefore we are not inclined to accept the aforesaid contention on the part of the petitioner.

17. This takes us to the fourth contention advanced by the petitioner that there was a breach of the principles of natural justice. It has been contended by the petitioner that various witnesses

were examined by the respondent behind his back. The contention of the petitioner in this behalf is required to be simply rejected because the record shows that inspite of necessary notice the petitioner remained absent from the 7th meeting to 24th meeting i.e. approximately about 18 meetings when various witnesses were examined. It is the fault of the petitioner to remain absent inspite of notices when the witnesses on behalf of the respondent no. 1 were examined in support of charges framed against the petitioner. However, with a view not to commit any injustice when he remained present in the 25th meeting and made an application being Exhibit No. 54 seeking permission to participate and cross-examine the witnesses for the first time the enquiry officer had permitted him to do so even though it was a fault on the part of the petitioner not to remain present when examination-in-chief was conducted. The petitioner had thereafter recalled the said witnesses whose evidence was taken on record and had cross-examined the said witnesses. In light of the aforesaid facts, we see no reason for the petitioner to make such a grievance of breach of

principles of natural justice. We find that the enquiry officer was more than fair by recalling the witnesses and making them available to the petitioner for cross-examination. In view of the aforesaid facts on record, we are unable to accept the contention of the petitioner that there has been a breach of principles of natural justice. The said argument has been further advanced by the petitioner by taking into consideration another facet of enquiry in which it has been contended by him that the petitioner was not allowed to contact his witnesses so as to make them available for enquiry. However, the said argument is also without any substance. Pursuant to the application made by the petitioner at Exhibit 65, an opportunity was given to the petitioner to produce his witnesses. However, the petitioner contended that he was not allowed to produce the witnesses by contacting them. Accordingly, a list of witnesses was taken from the petitioner and the enquiry officer himself issued letters requesting 21 witnesses to attend the enquiry and depose in the evidence before the enquiry officer. However, out of said 21 witnesses only 5 remained present and

balance witnesses declined to make themselves available to depose in favour of the petitioner and, therefore, the enquiry officer was required to proceed on the basis of the evidence produced and brought on record by the parties. In light of the aforesaid facts, we do not find any merit in the contention that there is breach of principles of natural justice in the enquiry proceedings and we accordingly reject the said contention.

18. The fifth and the last submission advanced by the petitioner is that the enquiry is perverse. We have gone through the findings of the Enquiry Officer. The findings of the enquiry officer indicate that there was evidence before the authority to come to the conclusion that the petitioner is guilty of the charges alleged against him. The main evidence is that of Principal A.K. Kukade who has been a party to this malpractice in getting students admitted to B.Ed. Programme of university through the petitioner herein. The petitioner has contended that the only evidence which is against him is that of A.K. Kukade who was the Principal and who was in fact a party to

this bribery scandal. The finding of the enquiry officer itself in para 255 of the report states that A.K. Kukade has been involved even with the earlier person who was holding the post of Assistant Registrar. It is, therefore, contended that his termination of service by mainly relying upon the evidence of A.K. Kukade is not just and proper and order of punishment should be quashed and set aside. The respondent on the other hand has strenuously contended that the petitioner should not be put back in service at all because the respondent no. 1 management has lost confidence in the petitioner and, therefore, it is not possible and/or desirable for this Court to interfere with the punishment of termination and put him back in service with the respondent management. We have given our anxious consideration to the aforesaid contention of the petitioner. We agree with the contention of the respondent university that they having lost confidence in the petitioner in light of the past history of the dispute between the parties, and, therefore, it is not desirable to place back the petitioner in service. At this stage, the

Petitioner appearing in person has made a request that if the Respondent no.1 has lost confidence in him and is not willing to place the Petitioner back in employment then in place of order of termination, the Petitioner should be permitted to tender his resignation. He has also made a statement that he withdraws all charges levelled against the Vice Chancellor with immediate effect. He has also given an undertaking to this Court that he shall not make any monetary claim as against respondent no.1. He has however, pleaded that in so far as his provident fund is concerned the same should be released. We are of the opinion that in the circumstances of the present case, it would be desirable that the order of termination dated 12.10.2000 issued by Respondent should be set aside and in place of that Petitioner should be treated as resigned from the services with effect from the said date of 12.10.2000. We accept the undertaking given by the Petitioner not to make any monetary claim and also accept the statement that he withdraws all charges against the Vice Chancellor and other officers. In the aforesaid circumstances, we direct Respondent no.1 to pay the

Petitioner his provident fund dues including the employer's contribution. However, the Petitioner will not be entitled to claim any other amount of any nature whatsoever either towards his retirement dues or any other claim.

19. We dispose of the present petition accordingly. However, there shall be no order as to costs.

20. We will be failing in our duty if we do not record our appreciation about the manner in which the petitioner in person has conducted himself and has succinctly placed his argument for our consideration. We express our appreciation for the same.

(A.P.SHAH, J.)

(S.U. KAMDAR, J.)